

# ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
BLUESTONE BROADCASTERS, INC. )  
 )  
For Renewal of License, )  
WMTD(AM), Hinton, WV )

MM DOCKET NO. 96-192

File No. BR-950531ZF

To: Hon. Richard L. Sippel  
Administrative Law Judge

DOCKET FILE COPY ORIGINAL

## MOTION FOR SUMMARY DECISION

Bluestone Broadcasters, Inc., licensee of AM Station WMTD, Hinton, West Virginia ("Bluestone" or, sometimes "WMTD"), by counsel, respectfully moves for the issuance of a summary decision in this proceeding, pursuant to Sec. 1.251 of the Commission's Rules and the provisions made for such filing by the Administrative Law Judge's Order of October 17, 1996, following the pre-hearing conference of the same date (Tr. 7-9). In support whereof, Bluestone states as follows:

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List A B C D E

### Preliminary Statement

1. Bluestone is the licensee of AM Station WMTD, a 1 kw Daytime station, licensed on 1380 kHz. It suspended operations on January 27, 1993 when the long term lease expired and the owner of the transmitter/antenna site ordered the licensee to remove the tower and transmitter, which it did. Notification of cessation of operations on that account and requests for special temporary authority to remain silent, filed under Sec. 73.1340 of the Rules, were filed commencing February 10, 1993 (FCC receipt date). The initial request was granted by letter order

of the Chief, AM Branch, Audio Services Division, Mass Media Bureau, for a three months period from date of issuance of the letter order. Thereafter, Bluestone filed, and was granted, requests for extension of the authority to remain silent, for three months per request/authorization, until February 21, 1996 when Bluestone filed a request for extension of the STA which ran to February 24, 1996. On that request, the Audio Services Division (by the Assistant Chief) advised in a Hearing Designation Order (HDO) that Bluestone "has failed to demonstrate that causes beyond its control warrant the station's continued silence. Bluestone's request does not provide good cause for the continued extension of its special temporary authority." HDO, Par. 2. Sources, Hearing Designation Order, released September 10, 1996, DA 96-1509; Attachment 2 (copies of STA requests and grants); FCC WMTD license files.

2. In the meantime, the station's license was approaching renewal and Bluestone filed the captioned application for renewal of license on March 31, 1995.<sup>1/</sup> By Hearing Designation Order, DA 96-1509, released September 17, 1996 ("HDO"), the Assistant Chief, Audio Services Division, Mass Media Bureau, by delegated authority, designated the renewal application for hearing, upon the following issues:

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<sup>1/</sup> As shown in the Statement of Facts, the renewal included an exhibit as to WMTD's "silent" status and the site problem.

- (1) To determine whether Bluestone Broadcasters, Inc. has the capability and intent to expeditiously resume the broadcast operations of WMTD (AM), consistent with the Commission's Rules.
- (2) To determine whether Bluestone Broadcasters, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

The HDO placed upon Bluestone both the burden of proceeding with the introduction of evidence and the burden of proof with respect to all the issues. (HDO at para. 6).

3. A Prehearing Conference Order, issued by the Administrative Law Judge assigned to this case, was released September 17, 1996 (FCC 96M-22-, Mimeo 62174). The Prehearing Order specified a hearing date, inter alia, and established procedural dates, including one for a Prehearing Conference. The Prehearing conference was held on October 17, 1996 (Tr. 1-10). At the conference provision was made for trying the case on a summary decision basis, and the earlier specified evidentiary hearing date was cancelled. An Order was issued formalizing the ruling(s). Order, 96M-236.

4. Additional events, which will be treated with in more detail in the Statement of Facts and Concl'sn portions of this motion, were the completion of local notice of hearing activities by Bluestone, filed on November 8, 1996 with a motion for order as to substantial compliance and sufficiency of performance under Sec. 73. 3594 of the Rules, which is pending, and an Amendment to the Renewal with a Petition for Leave to Amend filed November 14, 1996. The pleading's attachments were copies showing Bluestone's application for construction permit for minor change to specify a new site, a request for

special temporary authority to operate WMTD with temporary antenna system from the new site, and covering requests for "Silent Station-Expedited Consideration" of the same. The renewal Amendment would specify the new site and modification application specs for the renewed license values in lieu of the current values. The petition for leave to so amend is pending.

#### Statement of Facts

5. The factual matter contained in this Motion is taken from the HDO, the specific exhibits cited herein (with copies), and the Declaration under penalty of perjury of Lonnie R. Mullins, president of Bluestone. This Declaration is Attachment 1.

6. The locale. Hinton, West Virginia had a 1990 U.S. Census population of 3,433. It is in Summers County, W VA, which had a 1990 population of 14,204. 1990 U.S. Census, official notice requested; copies of pages from Census document attached, as last attachment.

7. The HDO recites the following facts, and the Assistant Bureau Chief's reasons (conclusions) as the basis for specification of the issues. With footnotes omitted, the Assistant Chief stated:

"2. WMTD(AM) suspended operations on January 27, 1993 when the owner of the station's transmitting antenna site ordered the licensee to remove its facilities from the property. The most recent special temporary authorization permitting the station to remain silent expired February 24, 1996. On February 21, 1996, Bluestone filed a further request for extension of this temporary authorization representing that it needed additional time to locate a suitable site. Our review of the past records for this station reveals that Bluestone's attempts to secure an acceptable site to relocate the facility have not been successful. Further,

Bluestone offers no evidence that such efforts will succeed in the near future and that the station can expeditiously resume operations. The station has been silent for a protracted period of time and the licensee has failed to demonstrate that causes beyond its control warrant the station's continued silence. Bluestone's request does not provide good cause for the continued extension of its special temporary authority. Consequently, Bluestone is in apparent violation of Sections 73.1740 and 73.1750 of the Commission's Rules. "

The following additional facts are pertinent and necessary to this Motion.

8. Bluestone acquired WMTD on January 1, 1964. Mr Mullins has served continuously as the station's general manager and chief operator, in addition to being a corporate officer throughout Bluestone's ownership. The station had to "go silent" in January 1993, when the new owner of the transmitter site of thirty-three years' utilization, directed the station to remove. The station did so, and began removing equipment on January 27, 1993, all of which was reported to the Commission with the first of several requests to remain silent. Attachment 1, paras 1 & 2; Attachment 2, pp 1,2.

9. Mr. Mullins states that during the period from February 1993, when the loss of site was reported and authority to remain silent (for a year, in the first request), Bluestone has attempted to stay in compliance with the Commission's Rules and to keep the Commission apprized of its efforts to resume broadcasting, although with the three months filing/three months authorization routine the later exchanges took on a "form letter" procedure. The chronology of the requests and grants of authority is as follows:

Feb. 8, 1993 Bluestone sent a letter to the FCC advising of the loss of site, and requesting a period of one year to locate a new site and file the necessary application.

Mar. 2, 1993 FCC letter (Chief AM Branch) advising necessity

to file Anti-Drug Abuse certificate.

- Mar. 18, 1993 Bluestone files certificate.
- Mar. 30, 1993 FCC grants authority to remain silent for three months from date, and advising as to requirements for further requests to remain silent, if required, or steps to be taken if operation resumed.
- June 28, 1993 Bluestone sends request for STA to remain silent for one year, citing contacts initiated with property owners, with problems considering engineering and environmental restrictions.
- July 21, 1993 FCC grants temporary authority to remain silent for three months from date.
- Oct. 20/21 '93 Bluestone sends request for remain silent authority for another 90 day period.
- Nov. 15, 1993 FCC grants temporary authority to remain silent for three months from date.
- Feb. 14, 1994 Bluestone requests remain silent for another 90 day period. Reports continuation of search for new site.
- Mar. 22, 1994 FCC grants remain silent authority for three months.
- June 20, 1994 Bluestone requests remain silent authority for another 90 day period.
- Aug. 1, 1994 FCC grants authorization for three months from date.
- Oct. 25, 1994 Bluestone requests remain silent authority for another 90 day period.
- Nov. 9, 1994 FCC grants remain silent authority for three months.
- Feb. 3, 1995 Bluestone requests authority for another 90 day period.
- Feb. 13, 1995 FCC grants authority for three months.
- May 10, 1995 Bluestone requests remain silent auth. for another 90 days.
- May 19, 1995 FCC grants authority for three months from date.
- May 26, 1995 In Renewal application, Bluestone recites the station's off-air status from site loss January 1993 and the STA remain silent requests made and granted, and effort(s) to re-establish the station as ongoing, hopeful of securing a site and FCC

approval so as to "return [t]he Station to operation in the early portion of the next license term." (This exhibit from the renewal application included in chronological order in Attachment 2).

- Aug. 15, 1995 Bluestone requests permission to remain silent for another 90 day period.
- Aug. 24, 1995 FCC grants remain silent for six months from date. (thus, to February 24, 1996).
- Feb. 21, 1994 Bluestone requests permission to remain silent for another 90 day period.

The "form letter" aspect of the exchanges is apparent from a review of the items in Attachment 2.

10. During the "remain silent" period Bluestone's efforts to find a new site, and the problems it encountered, can best be related in the declarant's own language, from Attachment 1:

Our consulting engineer suggested trying to find a new site within one-half mile of the original location if possible, as "re-engineering" the station to satisfy interference contours would likely eliminate sites much farther removed. Given the rugged terrain in the immediate vicinity of Hinton, WV and the fact an AM site requires slightly over three acres of reasonably level and clear land, our choices were obviously limited.

Our first and most desirable attempt for a new site was on land adjacent to the original site and owned by Mrs. C.O. O'Farrell of Hinton, WV. Initially, Mrs. O'Farrell showed a willingness to lease the necessary land but said she would have to consult with children and family members. While progress was admittedly slow, Mrs. O'Farrell continued to indicate an agreement was likely. Since this was an ideal re-location, I was encouraged to hold out for favorable results; especially since my approval letters from the FCC to remain silent did not appear to suggest urgency.

\* \* \*

Hopefully, this declaration will reinforce the earlier request with regard to specifics. During the twelve month period preceding this statement, I contacted and re-contacted property owners in addition to Mrs. O'Farrell, who I believed owned suitable sites and because word spread we were looking for a site I responded to offers from property owners outside of the targeted area. One of these was R.J. Rushford of Hinton, WV, offering sale of a plot which we determined to be too small and too close to other buildings to permit a proper tower and ground system.

11. Since the HDO was issued, Bluestone has attempted to expedite the process of resuming operation of WMTD, both with respect to meeting the HDO's requirements and nailing down a site and getting FCC approval for resumption on an expedited basis. Bluestone engaged legal counsel, and with counsel's assistance turned to completion of the local notice, by publication of the HDO and its issues. See Attachment 1, page 2 and Declaration and material filed with Motion for Order on Local Publication. Renewed efforts to obtain property were made, with a disappointment followed by further discussions with the ultimately successful parties, who "after consultation with their family did agree to lease a corner on their farm for twenty years . . . an option reflecting this agreement has been executed." Attachment 1, page 2.

12. With a site, Bluestone prepared and filed (by courier to FCC Pittsburg office as appears from filing letter, copy attached), an application for construction permit for minor change for WMTD. This was filed November 12, 1996. At the same time, Bluestone prepared and filed an application (request) for special temporary authority to operate WMTD with temporary antenna from the new site, abiding action on the modification application. This would permit almost immediate resumption of operations, WMTD suggests. Bluestone also filed an Amendment to the renewal application, to specify for the renewed license the values shown in the minor change application. Petition for Leave to Amend and Amendment filed November 14, 1996. Bluestone separately and additionally requested Expedited Consideration and grant of its application(s), so as to achieve early resumption of operations,

stating its reliance on the Commission's Public Notices relative to silent stations and resumption of operations against the automatic termination of license for a station silent for a year on February 9, 1997, as enacted in the 1996 Telecommunications Act (Pub. L. No. 104-104, 110 Stat. 56, §403(1), 1996). Bluestone is, of course, participating fully in these renewal proceedings, so as to obtain a renewed license for the station it proposes to have back on the air under Commission temporary authority, minor change construction permit or regular license, as amended, committing itself to same expedited action it seeks with respect to the several implementing authorizations.

#### Conclusions

13. Bluestone proceeds under the provisions of Section 1.251 of the Commission's Rules, for a Summary Decision. It is submitted that the Summary Decision should be granted and the issues resolved in the renewal applicant's favor. Summary Decision is warranted because it has been shown that there is no genuine issue of material fact remaining for determination at the hearing. The basic facts do not appear to be disputed, so the truth is clear, and we do not see how the parties could be in disagreement regarding the material factual inferences that may be properly drawn from such facts. Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975).

14. Taking up the issues in order, the factual findings almost force the conclusion that Bluestone has the capability and intent to expeditiously resume the broadcast operations of WMTD(AM), consistent with the Commission's rules. The capability and intent

are demonstrated by the arrangements for a new site, the preparation and filing of an application for authority within the FCC rules, i.e., for a minor change permit and simultaneously proffering an amendment to the renewal application to cover those same specifications, and the engineering studies and Bluestone's participation in formulation of ~~means~~ for almost immediate return of the station to the air, in the STA request filed September 12, 1996. Bluestone's filings ~~were~~ accompanied by separate simultaneous requests for expedited consideration in implementation of ~~the~~ Commission's Public Notices (set out in appendix hereto) relative to the early return to operation of silent stations. Bluestone's participation in these proceedings, its pre-hearing activities, the extra measures it took to get its new site application and STA request on file the same day as presentation (the courier filings in Pittsburgh, PA), add to the basis for the conclusion that Issue premises have been met by Bluestone, and it is resolved in its favor.

15. Taking up Issue 2, we might first consider the violation vel non of Section 73.1750 of the Commission's Rules, the alternative rule specified in Issue 2. The rule is relatively short, so it might be set out here:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

We do not have to underscore; the operative and triggering

language is "permanent discontinuance of operation." Bluestone clearly had the intention throughout to restore the station to operation, and its "silent" periods were stated and portrayed as temporary, as opposed to permanent disruption. The activities before the HDO could not be read as any permanent discontinuance, and after the HDO the concrete steps, the applications and request summarized under the Issue 1 discussion, above, further bottom the conclusion that Bluestone has not violated Section 73.1750 of the Rules.

16. Section 73.1740 of the Rules concerns operations and temporary discontinuances of operation of broadcast stations - - the "remain silent" in approved vernacular - - situations and authorizations such as set out in the Bluestone filings and the FCC (Audio Services Division) actions listed in the findings Par. 9, supra, and Attachment 2. The text of the rule is set out in the Appendix; however, the significant portion thereof is, for present purposes, in Sub-section (a)(4) which states that after a temporary discontinuance of not more than thirty days, informal written request shall be made for such additional time as may be deemed necessary for the "remain silent" mode. The Statement of Facts establish that Bluestone complied with this provision and had each of its requests granted, and during the last period of "remain silent" authority, but before its expiration, did file a request for extension thereof, or further authority for additional time (Attachment 2, Bluestone Feb. 21, 1996 request).

That request was not denied (nor affirmatively granted, concededly), and the response, if you will, is the HDO's statement that it is insufficient and Bluestone has failed to demonstrate that causes beyond its control warrant the station's continued silence, so there is not good cause for the continued extension of the special temporary authority. The HDO does not deny the latest Bluestone request, however strong the language of its view of Bluestone's silent period and its attempts to secure an acceptable site up to the HDO time. Accordingly, the latest extension request, filed before expiration of the last approved period, would have continuing vitality at least to the extent of militating against a conclusion that Bluestone's non-compliance was deliberate or intended to circumvent the Commission's Rules.

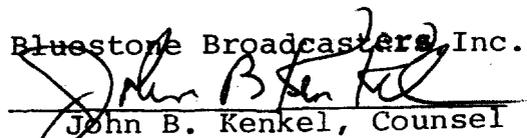
17. Bluestone's activities, reports and applications for authorizations to cover its desired return to operation after the HDO suggest that there would have been no logical reason for Bluestone to intentionally refrain from asking for a further extension when the HDO specified the Audio Division's view of its then pending February 21, 1995 request. The facts above recited and Mr. Mullins' declaration testimony comport with a conclusion that even if there be a technical violation of the provisions of Sec. 73.1740 it was neither intentional nor deliberate, and such violation would not impact adversely upon Bluestone's basic qualifications. Cf. Video Marketing Network, Inc., 10 FCC Rcd 7611, 7613 (MMB 1995). With this, Issue 2 would be resolved in Bluestone's favor.

18. The third issue is the ultimate one, calling for a determination of whether renewal should be granted, in light of the evidence adduced pursuant to Issues 1 and 2. Since such evidence, as found and discussed under the first two issues shows that Bluestone has the capability and intent expeditiously to resume the broadcast operations of WMTD consistent with the Commission's Rules, and that it did not violate Sec. 1750 of the Rules, nor violate in any but a non-deliberate, non-disqualifying sense (if that) the provisions of Sec. 73.1740 of the Rules, the ultimate conclusion is that Bluestone is qualified and a grant of the renewal would serve the public interest, convenience and necessity.

19. It is recognized that the amendment to the renewal, to specify the new site from which Bluestone can, and will as it has stated, expeditiously resume operations, is pending when this motion is submitted. However, it assumes grant of the amendment petition, which would remove any abiding ground for not granting a renewal on account of absence of a site. The prayer for relief includes the grant thereof, as well as of the other preliminary motion(s) as may be outstanding when the Summary Decision may issue.

WHEREFORE, Bluestone requests that it have the Summary Decision sought hereby and the other and further relief as may be required for the decision and grant of the renewal.

Respectfully submitted,

Bluestone Broadcasters, Inc.  
  
John B. Kenkel, Counsel

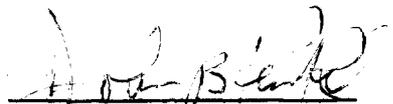
Kenkel and Assocs.  
November 15, 1996

Certificate of Service

I hereby certify that a copy of this Motion for Summary Decision, with appendix and attachments subjoined, was delivered this 15th day of November, 1996 to:

Hon. Richard L. Sippel  
Administrative Law Judge  
Chambers, 2000 L Street, NW  
Washington, D.C.

Jacqueline Ellington, Esq.  
Federal Communications Commission  
Hearing Division, Room 7212  
2025 M Street, NW  
Washington, D.C.

  
John B. Kenkel

Kenkel and Associates  
1901 L Street, NW #290  
Washington, D.C. 20036

(202) 659-4401

Appendix

FCC Public Notice May 22, 1996

FCC Public Notice October 17, 1996

Sec. 73.1740 FCC Rules (47 C.F.R. § 73.1740)



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET N.W.  
WASHINGTON, D.C. 20554

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222.

DA 96-818

Released: May 22, 1996

## PROCEDURES ANNOUNCED FOR EXPEDITED PROCESSING OF APPLICATIONS FILED BY SILENT BROADCAST STATIONS

The Mass Media and International Bureaus have established expedited processing procedures to assist silent broadcast stations who, pursuant to recent legislation, will lose their licenses if they remain silent for 12 consecutive months and who need the Commission's grant of an application in order to resume operations.

### Effect of the Telecommunications Act of 1996

The Telecommunications Act of 1996 provides for the expiration of broadcast station licenses as a matter of law upon a station's failure to operate for 12 consecutive months. See Pub. L. No. 104-104, 110 Stat. 56, § 403(I) (1996). The license of any station that went silent on or before February 8, 1996, when the legislation was enacted, will expire on February 9, 1997 if the station has not resumed operations during the year. See Order, Silent Station Authorizations, FCC No. 96-218 (released May 17, 1996). Likewise, the license of any station that goes silent after February 8, 1996 will expire one year from whatever date silent status commenced if the station does not resume operations during the year. Id. A station's authorizations and pending applications will not toll or extend the 12-month period that triggers expiration.

### Expedited Processing Procedures

The responsibility for bringing a silent station back on the air is that of the licensee. Nevertheless, recognizing that the new legislation creates a need for expedient action on applications that are required to return a silent station to the air, we have established the following procedures:

(1) With each application, the applicant should submit a transmittal letter prominently labelled "REQUEST TO EXPEDITE APPLICATION OF SILENT STATION." Each letter should include (a) the station's call sign, city and state; (b) the type of application; (c) a brief explanation of why action on the application is necessary to return to the air and the date that the station's license will expire if it remains off the air. A separate copy of the letter should also be sent or hand-delivered directly to the relevant address on the attached list. For applications already on file, a letter containing the same information should promptly be submitted to the relevant address on the list.

(2) Limited staff resources and mandatory public notice periods restrict speed of disposal rates for all types of applications. The staff needs no less than 45 days from the date of filing to act on unopposed assignment and transfer applications. It generally needs 4 months to act on unopposed minor modification applications. Deficiencies in either type of application slow processing considerably. Therefore, silent station applicants should submit any application required for the resumption of operations as early as possible and should use extreme care in preparing those applications to ensure prompt action. Early submission is especially important if the applicant anticipates objections or petitions against the application, or if the application requires a rule waiver.

(3) The applicant should notify the Commission promptly upon its return to the air. (see list)

The staff will use its best efforts to act on applications timely. However, the Telecommunications Act does not afford the Commission discretion to extend license terms. We therefore emphasize that, as a matter of law, the staff's inability to act on any application within a specific time can not prevent license expiration nor give rise to any equitable claim that the license term should be extended.



# PUBLIC NOTICE

Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

News media information 202 / 418-0500  
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DA 96-1718

Released: October 17, 1996

## **DEADLINE APPROACHING FOR SILENT BROADCAST STATIONS: AM and FM STATIONS URGED TO FILE RELATED APPLICATIONS BY NOVEMBER 1**

The Telecommunications Act of 1996 provides for the expiration of broadcast station licenses as a matter of law upon a station's failure to operate for 12 consecutive months. See Pub. L. No. 104-104, 110 Stat. 56, § 403(l) (1996). The license of any station that went silent on or before February 8, 1996, when the legislation was enacted, will expire at 12:01 a.m. on February 9, 1997 if the station has not resumed operations during the year. See Order, Silent Station Authorizations, FCC No. 96-218 (May 17, 1996); Public Notice, Expedited Processing, DA 96-818 (May 22, 1996).

Commission records indicate that the licenses of many silent AM and FM stations which have not been designated for hearing will expire as a matter of law under the cited provision if the stations are not returned to the air before February 9, 1997. To resume operations, some of these stations will require prior Commission action on a related application, such as an application proposing a change of site or change of ownership. The Mass Media Bureau reminds licensees of these silent AM and FM broadcast stations that they may request expedited processing of these applications and strongly urges them to submit such applications no later than **November 1, 1996**. Because of factors such as public notice periods, applicants who do not file necessary applications by this date may not be able to resume operations before February 9, 1997 even if their applications are relatively routine. Silent station applicants also should use extreme care in preparing their modification and assignment applications because deficiencies in those applications slow processing considerably. Finally, the applicant should notify the Commission promptly upon its return to the air.

We remind silent broadcast stations of our expedited processing procedures. With each application, the applicant should submit a transmittal letter prominently labelled "REQUEST TO EXPEDITE APPLICATION OF SILENT STATION." Each letter should include (a) the station's call sign, city and state; (b) the type of application; (c) a brief explanation of why action on the application is necessary to return to the air and the date that the station's license will expire if it remains off the air. A separate copy of the letter should also be sent or hand-delivered directly to the relevant address on the attached list. For applications already on file, a letter containing the same information should promptly be submitted to the relevant address on the list.

Our issuance of this Public Notice or a station's submission of an application does not preclude our designating silent stations for hearing prior to automatic expiration in circumstances where the staff deems designation to be appropriate.

**CONTACTS FOR SILENT BROADCAST STATIONS:**

**AM, FM, FM Translator and Booster Stations, Radio Broadcast Experimental Stations:**

**Requests to Expedite:**

James Crutchfield  
Audio Services Division  
Mail Stop 1800B3, Room 332  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-1410

**Notification that a station has gone silent or resumed operations:**

**FM Stations:**

Glenn Greisman  
Audio Services Division  
Mail Stop 1800B3, Room 332  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-1410

**AM Stations:**

Sharlene Lofty  
Audio Services Division  
Mail Stop 1800B2, Room 344  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-1411

**TV, TV Booster, TV Broadcast Experimental Stations (Expedite Requests & Notification):**

Doris McGhee  
Video Services Division  
Mail Stop 1800E1  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-2827

**Low Power TV, TV Translator Stations (Expedite Requests & Notification):**

Hossein Hashemzadeh  
Video Services Division  
Mail Stop 1800E2  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-2827

**International Broadcasting Stations (Expedite Requests & Notification):**

Charles H. Breig  
Planning & Negotiations Division  
International Bureau, FCC  
Mail Stop 0800 C1, Room 872  
2000 M Street, N.W.  
Washington, D.C. 20554  
FAX: (202) 418-0398

§73.1740 Minimum operating schedule. - (a) All commercial broadcast stations are required to operate not less than the following minimum hours:

(1) AM and FM stations. Two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.

(i) Class D stations which have been authorized nighttime operations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

(2) TV stations.

(i) During the first 36 months of operation, not less than 2 hours daily in any 5 broadcast days per calendar week and not less than a total of:

(A) 12 hours per week during the first 18 months.

(B) 16 hours per week during the 19th through 24th months.

(C) 20 hours per week during the 25th through 30th months.

(D) 24 hours per week during the 31st through 36th months.

(ii) After 36 months of operation, not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week.

(iii) Visual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted in computing program service (see §73.653).

(3) "Operation" includes the period during which the station is operated pursuant to temporary authorization or program tests, as well as during the license period.

(4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

(b) Noncommercial educational AM and TV stations are not required to operate on a regular schedule and no minimum hours of operation are specified; but the hours of actual operation during a license period shall be taken into consideration in the renewal of noncommercial educational AM and TV broadcast licenses. Noncommercial educational FM stations are subject to the operating schedule requirements according to the provisions of §73.561.

¶ NOTE: Section added effective October 16, 1978, 43 FR 45842. For Order see 44 RR 2d 481.

Subdivision (a)(1)(i) amended by order in Docket No. 87-131, effective December 1, 1987, 53 FR 1030. For Report see 64 RR 2d 17. Rule amendments at 52 FR 48268 are superseded by this order.

Subdivision (a)(1)(i) amended by order in Docket No. 87-267, effective midnight April 19, 1992, 56 FR 64842, 57 FR 11689. For Report see 69 RR 2d 1395.

Attachments

- Attachment 1      Bluestone Remain Silent Requests  
and FCC (Audio Services Division) authorizations
- Attachment 2      Declaration of Lonnie R. Mullins, president,  
Bluestone Broadcasters, Inc.
- Attachment 3      Copy of Transmittal letter filing application  
for CP for minor change, November 12, 1996
- Copy of transmittal letter filing request for  
STA, November 12, 1996
- Copy of November 13, 1996 Request for Expedited  
Consideration
- Attachment 4      Excerpt U.S. Census, 1990, Population and Housing,  
West Virginia

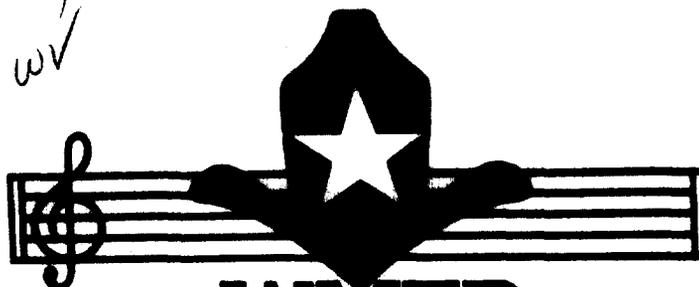
Attachment 1

Hinton, WV

RECEIVED

FEB 10 1993

FCC - MAIL ROOM



**WMTD**

**FM 102**

Bluestone Broadcasters, Inc.  
Box 820, Hinton, WV 25951  
Phone 304/466-1380

**AM 1380**

February 8, 1993

**AM BRANCH**

**FEB 12 1993**

Secretary  
Federal Communications Commission  
Washington, D. C. 20554

Att: AM Broadcast Branch

Re: Temporary discontinuance  
of operation.  
FCC Rule 73.1740

Gentlemen:

After 30 years of operation on the original Transmitter and antenna site, WMTD (AM), was unable to secure additional lease on the property and was notified to vacate the site by April 15, 1993.

Under FCC Rule 73.1740 (4) we are giving notice that operation was discontinued on January 27, 1993 and removal of equipment begun. The Federal Aviation Agency in Charleston, WV was notified that lighting was being removed and dismantling of the tower was expected to be completed within a few days. At this writing the tower is already completely dismantled.

Efforts are underway to find a suitable site for relocating the Transmitter & Antenna. We are requesting a period of one year to locate a site and file necessary application for changes in facilities with the FCC.

Thank you for your consideration.

BLUESTONE BROADCASTERS, INC.  
WMTD (AM) HINTON, WV

BY Lonnie R. Mullins DATE 2-8-93  
Lonnie R. Mullins, President & General Manager

Attachment: Copy of letter from property owner

Jan 9 1993

Dear Mr. Sonnie R. Mullins

This letter is to notify you to vacate the property you are renting in the Madams Creek area for your U.M.T.O. tower by April 15, 1993 because we are going to start building around this time.

Thank You

Robert H. Kaksar

STA

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20054

March 2, 1993

In Reply Refer To:  
8910 - SML  
Stop Code 180082

Bluestone Broadcasters, Inc.  
Box 820  
Hinton, West Virginia 25951

In re: WMTD (AM)  
Hinton, West Virginia

Dear Applicant:

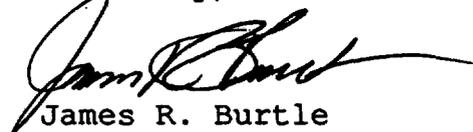
This is in reference to your pending request for Special Temporary Authority (STA) for the above-referenced station to remain silent.

On December 11, 1991, the Commission adopted a Report and Order (see attached copy) to amend Part 1 of the Commission's Rules to implement Section 5301 of the Anti-Drug Abuse Act of 1988. Effective February 3, 1992, applicants requesting STA are required to certify that neither the applicant nor any party to the request is subject to a denial of Federal Benefits under Section 5301.

Action will be deferred on your request pending receipt of your certification (See attached sample certification). Your certification should be directed to:

AM Branch, Room 342  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Sincerely,



James R. Burtle  
Chief, AM Branch  
Audio Services Division  
Mass Media Bureau

Attachments